

0805727 [2009] RRTA 167 (6 March 2009)

DECISION RECORD

RRT CASE NUMBER: 0805727

DIAC REFERENCE(S): CLF2008/91709

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Kerry-Anne Hartman

DATE: 6 March 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Pakistan, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. The applicant was represented in relation to the review by his registered migration agent who attended the hearing.
21. According to his protection visa application the applicant was born in Pakistan. The applicant stated that he completed ten years of education. He stated he attended Government High School. The applicant stated that he was employed as a "technician" at Trading Company for two years. The applicant states that he resided in the town from when he was born until two years prior to departure. The applicant states he resided in Country A for two years. The applicant travelled to Australia on a Pakistani passport issued in Country B. The applicant obtained a business visa which was issued in Country A.
22. The applicant made the following claims in his protection visa application.
 - I got married to [name] in [date] The marriage was not recognised by our family. We married each other because we loved each other. Her parents wanted her to marry someone else. We decided to run away and arrange our own marriage.
 - After getting married we hid in [name] for two months. [name] parents came to know about our hiding place and we had to leave because of the fear of persecution and even death.
 - I had received death threats from her [relatives] before we were married as they knew we were in love.
 - Being unemployed I had to return to my parents who were angry with me for getting married without their consent. They asked me to divorce [name] I refused to do so. My parents refused to help me.
 - We decided to leave [town] and go to Lahore. I got some cash from some friends and on [date] when we arrived at the bus station [name] [relatives] and friends were there looking for us. I was beaten up by them severely. I was seriously injured. They took us to their home and locked me in a room. They took [name] somewhere else. I don't know what happened to [name].

They kept beating me. I went unconscious because of their beating. Luckily I was able to escape and got a bus to Lahore.

- I was scared they may find me again. I applied for a visa to [country] with the help of my friend. I arrived in [country] on [date]. I lived comfortably there
- In [date] in [country] I saw one of the persons who were involved in my kidnapping and beating. I thought Australia would be safe as it is far away from Pakistan I applied for a business visa through an agent.
- I don't want to return to Pakistan as I fear that one of my wife's relatives will kill me.
- The police in Pakistan are corrupt. I reported the kidnapping. They abused me for running away and marrying without the consent of our parents.

23. The applicant was interviewed by an officer of the Department. He provided the following information at the interview.

- He obtained a degree in Pakistan. In Pakistan he worked as a shopkeeper. In Country A he worked as a technician.
- He provided the year his wife was born.
- He met his wife while she was still at school. He had left school.
- He married her in April in a mosque. He doesn't have a marriage certificate. He doesn't have any photos of his wife or any other document to verify her identity.
- They went into hiding after they were married. They hid in the town for two months His wife's [relative] and his friend found them. He was taken to his wife's home and was beaten until he was unconscious. He was unable to walk. He was locked up. When he regained consciousness the door was open and he walked out of the door, went to the bus stop and caught a bus to Lahore.
- In Lahore he contacted a friend in Country A and organised a visa to Country A.
- In Lahore he slept in a park until someone offered him accommodation. He lived in Lahore for 20 days with Mr Y.
- He returned to the town to get his ticket to Country A from his friend a few days before he left Pakistan. His friend couldn't come to Lahore. He only stayed half an hour. He reported his assault to the police when he went to the town. The police didn't write a report and threatened him.
- He couldn't remain living in Lahore because he was scared they would find him again and beat him up.
- He couldn't go anywhere else in Pakistan because he was frightened they would become aware of his whereabouts.

- He was going to stay in Country A for the rest of his life. He saw the person who beat him up in a market and he had to leave Country A.
24. He submitted the following reports at the interview:
- Pakistan: Honour Killings of girls and women, Amnesty International September 1999.
 - Case Study; Honour Killings and Blood Feuds, Genderside Watch www.gegendercide.org/case
25. The applicant's migration agent made the following submissions in relation to issues raised during the interview:

How [name] was successful in hiding his affair for two years in the village?

They used to write letters to each other and used to exchange those letters while on her way to school or at his shop where [name] used to come shopping (actually to meet [name]).

[name] used to take half day leave from school when they wanted to meet each other, this happened only a few times.

The letters were discarded soon after reading.

[name] [relatives] were suspicious of their affair and had threatened to kill him even before [name] and [name] got married.

Why [name] didn't have any photo of his wife?

[name] and [name] both were scared of getting caught, that's why they never kept any photo or any other identity of each other with them.

Why is it not possible for [name] to stay in other parts of Pakistan?

[name] is scared of being killed if he goes back to Pakistan. [name] family can find him easily anywhere in Pakistan. It may be difficult for her family to come to Australia. He also saw that person in [Country A] who was involved in beating and bashing him that is why [name] fled to Australia for his safety and he strongly believes that [name] family will not be able to come to Australia. [name] doesn't know how that person came to know about his whereabouts in [Country A]. [name] strongly believes that person came to harm him in [Country A].

Why he went back to [place] to collect the ticket from his friend and report the matter to police in [place]. ([name] mentioned that he stayed there only for half an hour).

[name] didn't want to go back to [place] as he was really scared of being caught again but his friend was unable to come to Lahore because his wife was in hospital (expecting delivery of baby) and he had to look after her as well. [name] also wanted to report this matter to police so he went to the police station nearby but had to leave when the police told him that he will be put behind the bars for getting married without the consent of his and [name] parents. After that he caught the bus straight to Lahore and then went to [Country A].

Application for a Business (Short Stay) visa

26. In his application for a Business visa the applicant provided the following information:
- He was employed by Trading Company in Country A as a technician.
 - He resided in Country A
 - He was coming to Australia to get technical training.
 - He submitted a document from the board of Technical Education which stated he had completed three years of study and had obtained a Diploma.
 - He submitted copies of pages from his passport issued in Pakistan.
 - He submitted his Business Card and letters from Trading Company

Summary of evidence provided by the applicant at the hearing

27. The Tribunal asked the applicant about the information he had provided in his protection visa. He claimed that he had written his story in Urdu and his agent had translated it for him. He claimed his agent had read back what he had translated and the information in his protection visa application was true and correct.
28. The Tribunal asked the applicant about his education in Pakistan. He claimed that he completed 10th grade. He stated that he had done no further study after he matriculated.
29. The Tribunal asked the applicant about his employment in Pakistan. He claimed he worked in a shop as a salesman. He claimed he worked in the shop for two years. The applicant claimed he was unemployed for four years.
30. The applicant claimed in Australia he works in a factory.
31. The Tribunal asked the applicant about his place of residence in Pakistan. He claimed he lived in a village. He claimed his village has a population of a particular size and is a particular distance from Lahore.
32. The Tribunal asked the applicant when he first obtained a Passport. He claimed when he was planning to visit his father in Country C The Tribunal asked the applicant if he could submit his previous passport to the Tribunal as it only had photocopies of the pages that were submitted with his business visa application. He claimed it was at his home but that he would submit it to the Tribunal after the hearing.
33. The Tribunal asked the applicant why he feared returning to Pakistan. He claimed he is afraid his wife's relative will kill him because his wife's family doesn't support their marriage.
34. The Tribunal asked the applicant about his wife. The applicant initially stated she lived in his village. He then claimed she lived in the next village. He claimed that her home was one kilometre from his home. When the Tribunal asked the applicant how old his wife was he claimed when she was born. When the Tribunal asked for her exact birth date he claimed he didn't know her exact birth date He claimed his wife had one relative. The Tribunal asked the applicant what school his wife attended. He claimed

the high school. When the Tribunal asked the applicant when his wife had finished high school he claimed that he didn't know.

35. The Tribunal asked the applicant when and how he first met his wife. He stated on her way to school. When the Tribunal asked the applicant what year his wife was in when he met her, he claimed that she had finished school. When the Tribunal put to the applicant that he had claimed he had met her on her way to school he claimed that his wife was studying at home not at school but she attended a tuition class. The Tribunal asked the applicant how he came to meet his wife on her way to a tuition class. He claimed they were walking on the same track. He claimed he was going to catch a bus as he was going to look for work in the city. The Tribunal asked the applicant if it was normal for a young girl in a rural area to walk alone. He claimed that the tuition class was not far from her home.
36. The Tribunal asked the applicant what happened on their first meeting. He claimed he saw her on the track and said hello. The Tribunal asked the applicant what happened after the first meeting. He claimed that they gradually started to like each other. The Tribunal asked the applicant when they met again. He claimed that every day they walked on the same track and saw each other. The Tribunal asked the applicant if he could explain in more detail how their relationship developed. The applicant claimed that they met on the track every day when his wife was on her way to attend tuition classes. He claimed that the tuition classes were held 5-6 days a week. He claimed his wife was always by herself. He claimed that they met every day for about 3-4 minutes so as not to arouse suspicion. He claimed that from time they met until when they were married they never met anywhere else or had any other type of contact with each other. The Tribunal summarised what the applicant had told the Tribunal about his contact with his wife and he agreed with the summary.
37. The Tribunal asked the applicant about his claim that his wife's relative was suspicious of their affair and had made death threats. The applicant claimed that her relative was suspicious a month before they were married. He claimed that someone must have seen them together on the track. The Tribunal asked the applicant what her relative did when he became suspicious. He claimed that he threatened him. The Tribunal asked the applicant for details of the threat. He claimed that when he was standing at the bus stop her relative and his friend approached him and said "we have come to know you are seeing our sister and we are warning you to leave her alone" When the Tribunal put to the applicant that this warning didn't appear to be a death threat he claimed that the friend didn't have a good character.
38. The Tribunal asked the applicant if his family were aware of his relationship with her. He claimed that 15-20 days before the marriage he had a chat with family members and told them he wanted to marry her. He claimed that they didn't agree to the marriage because they wanted him to marry someone else.
39. The Tribunal asked the applicant when he decided to marry his wife. He claimed after her relative threatened him. He claimed he decided to marry her even though the families did not approve of the relationship because he loved her.
40. The applicant claimed that he married his wife When the Tribunal asked the applicant what day of the week he was married he claimed he didn't remember. He claimed that

they were married in the mosque. He claimed his friend Mr X and two of Mr X's friends attended the wedding.

41. The applicant claimed that after they were married they hid in town with his friend Mr X. The Tribunal asked the applicant why he didn't move to an area that was further away from his home. He claimed he didn't have any money. The Tribunal asked the applicant for Mr X's address. He claimed he didn't know the exact address. He claimed he lived with Mr X for a couple of months. When the Tribunal asked the applicant when he left the town he claimed he didn't remember the date but he was there for about two months. He claimed he left the town because he wanted to move to Lahore to find work.
42. The Tribunal asked the applicant when he left the town to find work in Lahore. The applicant claimed he didn't know. He claimed that two months after living there he went to the bus stop to go to Lahore and somehow his wife's relatives had found out they were at the bus stop. He claimed that they beat him up and took his wife with them. The Tribunal asked the applicant for more details. He claimed that his wife's relative and his friend beat him up at the bus stop. He claimed that they took both of them in a car to his wife's home. He claimed they beat him again and he became unconscious. When the Tribunal asked the applicant to describe the injuries he suffered he claimed that his shoulder was injured. He claimed that at night when he regained consciousness he saw the door was open and he ran away. The Tribunal asked the applicant what he did when he ran away. He claimed he caught the bus to Lahore. When the Tribunal asked the applicant when this incident happened he claimed that he couldn't remember.
43. The Tribunal asked the applicant what he did in Lahore He claimed that when he arrived in Lahore he had nowhere to live so he slept in the park for 2-3 days. He claimed a person, Mr Y, who observed him for 2-3 days took him to his place. He could not tell the Tribunal where Mr Y lived in Lahore. He claimed he lived with Mr Y for 15-16 days. He claimed that during that period he contacted a friend in Country A. He claimed that his friend in Country A sent him an invitation to work in Country A and then he applied for his visa.
44. The Tribunal asked the applicant what documents he had to submit to get his Country A work visa. He claimed that he submitted the invitation letter his friend had sent him from Country A, a medical certificate, bank statements and his passport. The Tribunal asked the applicant when he applied for his visa to Country A. He claimed "after arriving in Lahore and after contacting his friend". The Tribunal asked the applicant when he arrived in Lahore. He claimed he couldn't remember. The applicant claimed he couldn't remember exactly when he applied for his visa to Country A but he claimed it was when he was in Lahore The Tribunal put to the applicant it had difficulty with the fact he couldn't remember significant events. He claimed he was very upset at that time.
45. The Tribunal put to the applicant that it had difficulty with his claims that he applied for his Country A work visa "after arriving in Lahore and after contacting his friend in [country]" as the visa was issued.

46. The Tribunal asked the applicant why he didn't leave Pakistan when his visa was issued. He claimed that he had to ask his friend to arrange his ticket as he didn't have any money.
47. The Tribunal asked the applicant why he didn't locate to another area in Pakistan. He claimed that he feared his wife's family would find him and kill him. The Tribunal put to the applicant that Pakistan had a population of 160 million people and it had difficulty with his claim that he could be found anywhere in Pakistan. He claimed they could put his picture in a newspaper.
48. The Tribunal put to the applicant that he obtained his visa to work in Country A but he didn't leave Pakistan until after two weeks. The Tribunal put to the applicant it had difficulty with his delay in leaving Country A given his claim that he feared he would be killed by his wife's family. The applicant claimed it took time for his friend to organise the money for his ticket.
49. The Tribunal asked the applicant if he had sought the protection of the authorities in Pakistan. He claimed he spoke to the police but they wouldn't help him. The Tribunal asked the applicant when he talked to the police. He claimed when he went to collect his ticket from his friend in the town. The Tribunal asked the applicant why he made a report to the police after he had organised his departure from Pakistan. He claimed that the police didn't register the report. He claimed they threatened him and told him that they would lock him up because he married without the permission of the family.
50. The Tribunal asked the applicant about his employment in Country A. He claimed he worked for Trading Company where he lived. He claimed that the company he worked for traded products. The Tribunal asked the applicant what work he did. He claimed that he checked the orders.
51. The Tribunal asked the applicant why he left Country A. He claimed that he saw his wife's relative's friend who had kidnapped and beat him in Pakistan. The Tribunal asked the applicant when he saw him. He claimed a year after arriving in Country A. The Tribunal put to the applicant that it had great difficulty with the fact he could not tell the Tribunal specific dates of any significant incidents he claimed had happened to him. He then claimed that he saw him in November. The Tribunal asked the applicant what he did when he saw the person. He claimed he ran away and applied for a visa to Australia. He claimed he applied for a business visa afterwards.
52. The Tribunal asked the applicant about the information he provided in his business visa application. He claimed his agent prepared everything. The Tribunal asked what documents he had submitted for his business visa. He claimed he didn't know his agent prepared and submitted the documents. The Tribunal put to the applicant that the information he submitted about his education and employment in Country A and Pakistan were inconsistent with the information he had provided to the Tribunal. The Tribunal put to the applicant that he had submitted a document stating that he had attended an education institution in Lahore for three years and had a Diploma. He submitted documents which stated he worked with a company dealing with products. He had submitted a business card which stated that the company he worked for was in Country A. The applicant claimed his agent prepared everything so he could get the visa. The Tribunal put to the applicant that the fact that he had provided false information and documentation to the Australian embassy to obtain a Business visa

may indicate that he would be prepared to provide false information to obtain a protection visa. The applicant claimed he wanted to come to Australia.

53. The Tribunal put to the applicant that he obtained his visa to Australia but he didn't leave Country A until a month after and asked why he delayed leaving Country A. He claimed he went to another city and stayed indoors and didn't go out. The Tribunal put to the applicant that it had difficulty with his delay in leaving Country A given his claim he feared for his life. He then claimed his agent took his passport and told him unless he was paid he would not return his passport.
54. The Tribunal put to the applicant that there were significant inconsistencies in his evidence which indicated to the Tribunal that he was not a witness of truth and that his story had been fabricated. The Tribunal put to the applicant for comment the following inconsistencies in his evidence.
55. The Tribunal put to the applicant that he told the Department a year his wife was born and he told the Tribunal she was born in a different year. The applicant claimed what he told the Tribunal was the correct year.
56. The Tribunal put to the applicant that there were inconsistencies in the evidence he had provided in relation to his contact with his wife. The Tribunal put to the applicant that he had told the Department that he had met her when she was still at school. His adviser had told the Department that he and his wife used to write letters to each other and had exchanged those letters while she was on her way to school or at his shop when she came to meet him. He had told the Tribunal that his wife had finished school and that their only contact was when they met on her track when she was on her way to tuition classes. The applicant claimed that when they saw each other on the track they gave each other letters. The Tribunal put to the applicant that it had asked him a number of times during the hearing to explain his contact with her and he had not claimed that they had exchanged letters. The Tribunal also put to the applicant that he told the Tribunal he was unemployed but his advisor had submitted that his wife met him and exchanged letters in his shop. The Tribunal put to the applicant that he told the Department he met his wife when she took a day off school and he had told the Tribunal she was not at school. The applicant claimed his wife was studying at home and he was unemployed.
57. The Tribunal put to the applicant that there were inconsistencies in his evidence in relation to when he was married. The Tribunal put to the applicant that he told the Department he was married in April and he told the Tribunal he was married in May. The applicant claimed he was married in May. He claimed he couldn't remember dates.
58. The Tribunal put to the applicant that he told the Departmental officer that when he was beaten by his wife's relative he was unable to walk but he had told the Tribunal his shoulder was injured. He claimed he was beaten on the shoulder and that was his main injury.
59. The Tribunal put to the applicant that he told the Departmental officer he worked as a technician in Country A and had obtained a degree in Pakistan. He told the Tribunal he had done no further study after his matriculation. He told the Tribunal he checked the orders for a trading company that dealt with products. He claimed his agent in Country A told him to say he was a technician.

60. The Tribunal put to the applicant that he told the Department that he saw the person who kidnapped him in Country A in March and told the Tribunal he saw him in November. He claimed he first saw him in November when he applied for a visa and then he saw him again in March.
61. The Tribunal put to the applicant it had difficulty accepting the claims he had made were true because of his vague evidence about significant incidents like his wife's birth date. He claimed "How can I remember all the dates". The Tribunal put to the applicant that he couldn't remember when he had tried to leave the town, when he was beaten and kidnapped, when he escaped from his kidnappers or when he arrived in Lahore. The applicant claimed he was beaten up so he couldn't remember.
62. The Tribunal put to the applicant it had difficulty accepting his claims were true because of his delay in leaving Pakistan after obtaining his visa to China. He claimed he didn't have the money to get a ticket and had to wait for his friend to get the ticket for him. The Tribunal put to the applicant it had difficulty with his delay in leaving Country A. He claimed that how he could leave Country A when his passport was with his agent.
63. The Tribunal put to the applicant that because of his inconsistent evidence, his vague evidence about significant things that he claimed had happened to him and his delay in leaving Pakistan and Country A it had problems with his credibility which may lead the Tribunal to confirm the decision of the delegate.
64. The Tribunal adjourned the hearing so the applicant and his advisor had time to consider the adverse information the Tribunal had put to the applicant and to give them the opportunity to present any further evidence or to make any submissions.
65. The applicant's advisor after the adjournment submitted that the applicant had difficulty remembering things and was confused because he was under pressure. He submitted that he had told the Department he could submit his marriage certificate but he couldn't get it from Pakistan. He claimed that in the area the applicant comes from they only record the year of birth not the date of birth and that is why he couldn't tell the Tribunal his wife's birth date. The applicant's advisor made no further submissions.
66. When the Tribunal asked the applicant if there was anything else he wanted to tell the Tribunal. He claimed that although he was confused about some dates his story was true. The applicant claimed that he needed no further time to comment on or respond to the information put to him during the hearing
67. The applicant submitted to the Tribunal his passport that had been issued to him in Pakistan.

FINDINGS AND REASONS

68. The applicant travelled to Australia on a Pakistani passport. The Tribunal accepts that he is a citizen of Pakistan and has assessed his claims against Pakistan as his country of nationality.
69. The applicant claims that he married his wife without the consent of their families. He claims after they were married they hid in the town. He claimed his wife's relative and

his friend kidnapped them and took them back to his wife's home. He claims he was beaten. He claims he managed to escape and caught a bus to Lahore. He claims while he was living in Lahore he applied for a visa to Country A. He left Pakistan and lived and worked in Country A. He claims in Country A he saw the person who had kidnapped and beaten him. He applied for a visa to Australia. He claims he fears returning to Pakistan because one of his wife's relatives will kill him.

70. When determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims the applicant has made. This may involve an assessment of the applicant's credibility. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Moreover, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547. If the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* (1999) 93 FCR 220).
71. The Tribunal did not find the applicant to be a truthful or credible witness. The reasons for the Tribunal's findings are discussed below.
72. There were problems with the applicant's claims about his wife.
73. At the hearing when the Tribunal asked the applicant how old his wife was he claimed a year she was born in When the Tribunal asked for her exact birth date he claimed he didn't know her exact birth date. The applicant had told the Departmental officer at the interview a different year of birth. When the Tribunal put to the applicant the inconsistencies in his evidence he claimed that what he told the Tribunal was the correct year his wife was born. His advisor submitted that the applicant couldn't tell the Tribunal his wife's exact birth date because in the area he came from in Pakistan they only record the year of birth. The Tribunal does not accept this submission as at the Departmental interview when the Departmental officer asked the applicant for his wife's birth date he provided an exact birth date.
74. At the hearing when the Tribunal asked the applicant when his wife had finished high school he claimed that he didn't know. When the Tribunal asked the applicant when he first met his wife he initially claimed on her way to school. When the Tribunal asked the applicant what year of school she was in when he met her, his evidence shifted and he claimed that she had finished school. He claimed she was studying at home and he met her on her way to tuition classes. The applicant had told the Departmental officer when asked when he met his wife that he had finished school but his wife was still going to school and he had met her on her way to school.

75. At the hearing the applicant told the Tribunal that the only contact he had with his wife before they married was when they met on the track on her way to tuition classes where they spoke for 3-4 minutes only so as not to arouse suspicion. In his letter to the Department the applicant's advisor claimed that the applicant and his wife used to write letters to each other. He submitted that they exchanged letters while his wife was on her way to school or at the applicant's shop where she came to meet the applicant. He also claimed that a few times she used to take half day's leave from school when they wanted to meet each other. At the hearing the applicant told the Tribunal that he had worked in a shop for two years but had been unemployed for a long time. When the Tribunal put to the applicant at the hearing that the information he had provided at the hearing was inconsistent with the information he had provided the Department he claimed that during their 3-4 minute contact on the track they exchanged letters and that his wife was studying privately not at school. The applicant's comments do not explain why he told the Department he met his wife on her way to school when he told the Tribunal that she had finished school. The applicant's comments do not explain why he told the Department he met her at his shop when he told the Tribunal he was unemployed. The applicant's comments do not explain why he did not tell the Tribunal they had exchanged letters until the inconsistencies in his evidence were put to him. The applicant's advisor submitted that the applicant has difficulty remembering things and was confused at the hearing because he was under pressure. The Tribunal has considered the advisor's submissions but does not find them convincing. At the hearing the applicant provided detailed evidence when he was asked about his contact with his wife and detailed evidence about his own personal circumstances at that time. The Tribunal summarised the applicant's evidence in relation to the applicant's contact with his wife and put the summary to the applicant. The applicant agreed with the summary.
76. At the hearing the applicant told the Tribunal that he was married in May. When the Tribunal asked the applicant what day of the week he was married he claimed he didn't know. The applicant told the Departmental officer he was married in April and in his protection visa application he claimed he was married in April. When the Tribunal put to the applicant at the hearing that he had provided inconsistent evidence about the date he was married he claimed he was married in May. The Tribunal is of the view that if the applicant had arranged his own marriage without the consent of his family or his wife's family he would have remembered when he was married and would have provided consistent evidence when asked about this significant event.
77. The Tribunal is of the view that the fact that the evidence the applicant provided at the hearing was inconsistent with the evidence he provided to the Department in relation to his wife's birth date, his contact with her before they were married and their date of marriage indicates he is not a witness of truth.
78. The Tribunal found the applicant's oral evidence unconvincing when asked about his time in the town.
79. The applicant claimed that after he was married he hid in the town with his friend. At the hearing the applicant could not tell the Tribunal the address of his friend. When the Tribunal asked the applicant how long he lived in the town he claimed "for about two months". He could not provide the Tribunal with any specific details as to when he lived in the town. At the hearing the applicant claimed he left the town because he wanted to move to Lahore to find work. In his protection visa application he claimed he left the town because his wife's parents had come to know their hiding place. The

Tribunal is of the view that the applicant's vague evidence as to when and where he lived in the town and the inconsistencies in his evidence as to why he left it indicates he is not a witness of truth.

80. There were a number of problems with the applicant's claim that he was kidnapped and beaten in Pakistan.
81. At the hearing the applicant claimed that when he went to the bus stop to go to Lahore, his wife's relative and his friend were there. He claimed he and his wife were kidnapped and taken to his wife's place. He claimed he was beaten at her place and became unconscious. When the Tribunal asked the applicant when this incident happened he claimed that he couldn't remember. When the Tribunal put to the applicant that it had difficulty accepting he had been kidnapped, when he couldn't remember when he had been kidnapped, he claimed he couldn't remember because he had been beaten. The applicant has not submitted any medical reports to suggest he has difficulty remembering things. The Tribunal is of the view that if the applicant had been kidnapped and taken to his wife's place he would have remembered when this significant incident had happened to him.
82. At the hearing when the Tribunal asked the applicant what injuries he suffered when he was kidnapped, he claimed his shoulder was injured. The applicant had told the Department that because of the injuries he sustained he was unable to walk. When the Tribunal put to the applicant the inconsistencies in his evidence he claimed the main injury was the shoulder injury. The Tribunal is of the view that if the applicant had been kidnapped and beaten he would have provided consistent evidence when asked to describe the injuries he suffered
83. At the hearing the applicant claimed that when he regained consciousness the door was open and he ran away and caught the bus to Lahore. The Tribunal is of the view that the applicant's claims about his escape are implausible given his claims that his kidnappers had threatened to kill him.
84. The Tribunal is of the view that the fact that the applicant could not remember when he was kidnapped and his inconsistent evidence about the injuries he suffered indicates he is not a witness of truth.
85. The Tribunal found the applicant's oral evidence unconvincing when asked about his time in Lahore. At the hearing the applicant claimed that when he arrived in Lahore he slept in a park for 2-3 days. He claimed that a person by the name of Mr Y who had observed him sleeping the park invited him to his place He claimed he lived with Mr Y for 15-16 days. He could not tell the Tribunal where Mr Y lived in Lahore. The applicant claimed that when he was living in Lahore he contacted a friend in Country A who sent him an invitation to work in Country A. He claimed that he then applied for his work visa. When the Tribunal asked the applicant when he applied for his visa to Country A he claimed after arriving in Lahore and after contacting his friend. When the Tribunal asked the applicant when he arrived in Lahore he claimed he couldn't remember. When the Tribunal put to the applicant it had difficulty with the fact he couldn't remember when he arrived in Lahore and when applied for his visa he claimed he was very upset at that time. The Tribunal is of the view that if the applicant had escaped to Lahore after being kidnapped, contacted his friend in Country A and then applied for a Country A visa in order to flee Pakistan he would have remembered when

he had escaped, when he had arrived in Lahore and when he applied for his visa. The Tribunal is of the view that the applicant's evidence about significant incidents he claimed happened to him was vague because he was not providing a truthful account of what had happened to him in Pakistan.

86. The applicant was issued with his Country A working visa. He didn't leave Pakistan until two weeks later. When the Tribunal asked the applicant why he delayed leaving Pakistan he claimed he had no money and it took time for his friend to organise money for his ticket. The Tribunal is of the view that if the applicant genuinely feared that his wife's family would kill him he would have departed Pakistan as soon as possible.
87. While the applicant was living in Country A he applied for a Business visa to Australia. In that application he stated that he was employed by Trading Company as a technician. He submitted a document with his application which indicated that he had obtained a Diploma . He submitted a document with his application which indicated that Trading Company were traders of products and were located in Country A. At the hearing the applicant told the Tribunal a completely different story about his employment in Country A. He claimed he worked for Trading Company in a different area of Country A, a company he described as traders in products. He also told the Tribunal that he had only completed year 10 and did not have any qualifications. When the Tribunal put to the applicant that what he had told the Tribunal about his employment in Country A was inconsistent with the information he had provided to obtain his business visa application he claimed his agent prepared everything for his business visa application so he could come to Australia. The Tribunal finds that the applicant submitted false information and documentation to obtain his Business visa. The Tribunal is of the view that the fact that the applicant provided false information and documentation to the Australian embassy to obtain a Business visa indicates that he is prepared to provide what ever information he thinks is necessary to obtain the visa he is seeking.
88. At the hearing the applicant claimed that he left Country A because he saw his wife's relative's friend who had kidnapped him in Pakistan. When the Tribunal asked the applicant when he saw him he claimed a year after arriving in Country A. When the Tribunal asked the applicant to be more specific he claimed that he saw him in about November. The applicant told the Departmental officer at the interview that he saw the person who had kidnapped him in March. When the Tribunal put to the applicant the inconsistencies in his evidence he claimed that he first saw the person in November when he applied for his visa and then he saw him again in March. The Tribunal does not find this explanation convincing. The Tribunal is of the view that the inconsistent evidence the applicant has provided indicates he is not a truthful witness.
89. The applicant's Australian Business visa was issued to him, but he didn't leave Country A until a month later. When the Tribunal asked the applicant why he delayed leaving Country A he at first claimed he went to another city, stayed indoors and didn't go out. When the Tribunal put to the applicant that it had difficulty with his delay in leaving Country A he claimed that his agent took his passport and told him unless he was paid he would not return his passport and it took time to pay him. The Tribunal does not find the applicant's explanations convincing given he provided a different explanation when adverse information was put to him. The Tribunal is of the view that the applicant's delay in leaving Country A after obtaining his Business visa indicates that his claim that he saw the person who kidnapped him has been fabricated.

90. Taking into account all of the above reasons, in particular, the applicant's vague and inconsistent evidence about significant incidents he claimed happened to him in Pakistan, the Tribunal finds that the applicant is not a truthful or credible witness. The Tribunal does not accept that the applicant married his wife without the consent of her family or his family. The Tribunal does not accept the applicant was threatened, beaten or kidnapped by his wife's relative or his friend. The Tribunal does not accept that the applicant left Pakistan because he feared he would be killed. The Tribunal does not accept that when the applicant was living and working in Country A he saw one of the people who were involved in his kidnapping and beating. The Tribunal finds that the applicant has fabricated these claims in order to strengthen his claim to refugee status.
91. The Tribunal finds that there is no real chance that the applicant will face persecution if he returns to Pakistan now or in the reasonably foreseeable future due to his membership of a particular social group or any other Convention reason. The Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason.

CONCLUSIONS

92. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

93. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.
Sealing Officer's I.D. APOTTE